

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MARK STEVEN LOWERY

PLAINTIFF

v.

Civil No. 06-4045

H.L. PHILLIPS, Sheriff, Miller
County, Arkansas; RICKY HUNTER,
Ex-Warden, Miller County Detention
Center; and MIKE GRIFFIN, Warden,
Miller County Detention Center

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Mark Steven Lowery filed this action pursuant to 42 U.S.C. § 1983 on June 5, 2006. He proceeds *pro se* and *in forma pauperis*. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2005), the Honorable Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

Defendants filed a motion for summary judgment (Doc. 24). To assist the Plaintiff in responding to the motion, I propounded a questionnaire to the Plaintiff (Doc. 29). Plaintiff was directed to complete, sign and return the questionnaire by January 7, 2008 (Doc. 29). To date, the Plaintiff has failed to respond to the questionnaire. The order and attached questionnaire have not been returned as undeliverable. The order was mailed to the same address as the court's prior orders. Plaintiff has not informed the court of any change in his address. Plaintiff has not sought an extension of time to respond to the questionnaire or otherwise communicated with the court.

I therefore recommend this case be dismissed with prejudice on the grounds the Plaintiff has failed to prosecute this action and comply with the order of the court. *See* Fed. R. Civ. P. 41(b). **The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections**

must be both timely and specific to trigger de novo review by the district court.

DATED this 5th day of February 2008.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE